

## **COMMUNITY AFFAIRS**

### **Division of Codes And Standards**

#### **Uniform Construction Code**

#### **Certificate requirements – Temporary Certificate of Occupancy**

#### **Proposed Amendment: N.J.A.C. 5:23-2.23**

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-124

Proposal Number: PRN 2005-

Calendar: See Summary below for explanation of exception to calendar requirement.

Submit written comments by April 22, 2005 to:

Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
PO Box 802  
Trenton, New Jersey 08625  
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**Susan Bass Levin,  
Commissioner**

The agency proposal follows:

### **Summary**

The proposed amendment to N.J.A.C. 5:23-2.23(g) is to address a temporary certificate of occupancy (TCO) in relation to soil conservation. The Department of Agriculture has proposed rules regarding the issuance of reports of compliance with conditions. This proposal contains the companion changes to the Uniform Construction Code (UCC) to tie the temporary certificate of occupancy to the soil district's conditional report of compliance.

The proposal also requires a TCO to include a list of any work that is to be completed before the issuance of a final Certificate of Occupancy.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments would have positive social impact as building owners would be able to occupy their buildings sooner as long as the appropriate soil conservation compliance reports are submitted.

### **Economic Impact**

The Department anticipates that the proposed rule will have a positive economic impact in that it allows earlier occupancy provided that there is a conditional report of compliance from the soil conservation district.

### **Federal Standards Statement**

No Federal standards analysis is required because these amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

### **Jobs Impact**

The Department does not anticipate that any jobs will be created or lost as a result of these proposed amendments.

### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendments would have an impact on the agricultural industry.

### **Regulatory Flexibility Statement**

Because the administrative structure of the Uniform Construction Code is not changed, the proposed amendments would not impose any recordkeeping or reporting requirements on “small businesses,” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

### **Smart Growth Impact**

The Department does not expect that it would have any impact upon either achievement of "smart growth" or implementation of the State Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

N.J.A.C. 5:23-2.23, Certificate requirements

(a) – (f) (No change.)

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1. The temporary certificate of occupancy and each subsequent renewal shall **list the work to be completed and shall** be valid for a reasonable period of time to complete the **specified** work, but not less than 60 days. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2. The request for a temporary certificate of occupancy may be denied when there are outstanding fees or penalties, when the required warranties, licenses or registrations are not in place, or the conditions of prior approvals affecting health and safety of the building occupants have not been met.

**i. In the case of soil conservation, a temporary certificate of occupancy shall be denied if a Report of Compliance or Report of Compliance with Conditions is not issued by the soil conservation district pursuant to N.J.A.C. 2:90.**

(h) – (p) (No change.)

Issued: December 31, 1991  
Supersedes Bulletin No. 84-3  
Revised: **April, 1999**

Subject: **Compliance with Requirements of  
Soil Erosion and Sediment  
Control Act**

Reference: **N.J.S.A. 4:24-39 et seq.  
N.J.A.C. 5:23-1.4**

Effective implementation of the Soil Erosion and Sediment Control Act of 1975, as amended, depends upon cooperation between municipalities and the local soil conservation districts. A developer frequently becomes aware of the requirements of the Soil Erosion and Sediment Control Act only when he approaches a municipality for development approval. Without cooperation between municipalities and soil conservation districts, securing compliance with the Soil Erosion and Sediment Control Act becomes very difficult.

For a project covered by the Soil Erosion and Sediment Control Act, a construction permit should not be issued unless a soil erosion and sediment control plan has been certified by the local soil conservation district. In addition, no certificate of occupancy should be issued upon completion of the project without a report of compliance from the soil conservation district. In municipalities that have a soil erosion and sediment control ordinance approved by the State Soil Conservation Committee, the required prior plan certifications and reports of compliance must be issued by the responsible municipal official. **A Temporary Certificate of Occupancy may be issued if a Report of Compliance or Report of Compliance with Conditions is issued.**

The help of local construction officials in implementing this procedure is essential. Contact your local soil conservation district (see listing provided) if you need to determine whether a project is covered by the Soil Erosion and Sediment Control Act and for additional information. Further information may be obtained from:

**STATE SOIL CONSERVATION COMMITTEE  
NEW JERSEY DEPARTMENT OF AGRICULTURE  
POST OFFICE BOX 330  
TRENTON, NEW JERSEY 08625-0330  
TELEPHONE: (609) 292-5540  
FAX: (609) 633-7229**

**[Soil Conservation Districts in New Jersey]**

| <b>DISTRICT</b>                                | <b>ADDRESS</b>   | <b>TELEPHONE NO.</b>              | <b>FAX NO.</b> |
|--|--|-----------------------------------|----------------|
| <b>BERGEN</b>                                  | 327 Ridgewood Avenue<br>Paramus 07652  | 201-261-4407<br>or 538-1552 *     | 201-261-7573   |
| <b>BURLINGTON</b>                              | Tiffany Square, Suite 100<br>2615 Route 38 - RD #2<br>Mount Holly 08060                            | 609-267-7410<br>or 267-0811 *     | 609-267-3347   |
| <b>CAMDEN</b>                                  | 423 Commerce Lane, Suite 1<br>W. Berlin 08091  | 609-767-6299<br>or 267-0811 *     | 609-767-1676   |
| <b>CAPE MAY &amp;<br/>ATLANTIC</b>             | Atlantic County Office Bldg<br>6260 Old Harding Highway<br>Mays Landing 08330                      | 609-625-3144<br>or 625-9400 *     | 609-625-7360   |
| <b>CUMBERLAND</b>                              | PO Box 144, Route 77<br>Deerfield 08313  | 609-451-2422<br>or 451-2144 *     | 609-451-1358   |
| <b>FREEHOLD (Monmouth<br/>&amp; Middlesex)</b> | 211 Freehold Road<br>Manalapan 07726   | 732-446-2300<br>or 462-1079 *     | 732-446-9140   |
| <b>GLOUCESTER</b>                              | Kandle Center<br>72 East Holly Ave.<br>Pitman 08071  | 609-589-5250<br>or 582-9027 *     | 609-256-0488   |
| <b>HUDSON, ESSEX &amp;<br/>PASSAIC</b>         | 15 Bloomfield Avenue<br>North Caldwell 07006   | 973-364-0786<br>or 528-1552 *     | 973-364-0784   |
| <b>HUNTERDON</b>                               | Community Services Annex<br>8 Gauntt Place<br>Flemington 08822                                     | 908-788-1397<br>or 782-3915 *     | 908-788-0795   |
| <b>MERCER</b>                                  | 508 Hughes Drive<br>Hamilton Square 08690  | 609-586-9603<br>or 584-8337 *     | 609-586-1117   |
| <b>MORRIS</b>                                  | Court House, PO Box 900<br>Morristown 07960<br>(Location - 560 W. Hanover Ave.<br>Morris Township) | 973-285-2953<br>or 538-1552 *     | 973-285-8345   |
| <b>OCEAN</b>                                   | 714 Lacey Road<br>Forked River 08731   | 609-971-7002<br>or 267-0811 *     | 609-971-3391   |
| <b>SALEM</b>                                   | PO Box 168<br>Deerfield 08313  | 609-769-1124<br>or 582-9027 *     | 609-451-1358   |
| <b>SOMERSET-UNION</b>                          | Somerset County 4-H Center<br>308 Milltown Road<br>Bridgewater 08807                               | 908-526-2701<br>or 725-3848 *     | 908-526-7017   |
| <b>SUSSEX</b>                                  | 186 Halsey Road, Suite 2<br>Newton 07860   | 973-579-5074<br>or 908-852-5450 * | 973-579-7846   |
| <b>WARREN</b>                                  | 224 Stiger Street<br>Hackettstown 07840  | 908-852-2579<br>or 852-5450 *     | 908-852-2284   |

\*Natural Resources Conservation Service Field Office]

SOIL CONSERVATION DISTRICTS IN NEW JERSEY

| <b><u>DISTRICT</u></b>                     | <b><u>ADDRESS</u></b>  | <b><u>TELEPHONE</u></b>                    | <b><u>FAX</u></b> |
|--|--|--|-------------------|
| <b>BERGEN</b>                              | 700 Kinderkamack Road, Ste. 106<br>Oradell, NJ 07649   | 201-261-4407<br>or 973-538-1552*           | 201-261-7573      |
| <b>BURLINGTON</b>                          | Tiffany Square, Suite 100<br>1289 Route 38<br>Hainesport, NJ 08036                                       | 609-267-7410<br>or 609-267-0811*           | 609-267-3347      |
| <b>CAMDEN</b>                              | 423 Commerce Lane, Suite 1<br>W. Berlin, NJ 08091  | 856-767-6299<br>or 609-267-0811*           | 856-767-1676      |
| <b>CAPE-ATLANTIC</b><br>609-625-7360       | Atlantic County Office Building<br><br>6260 Old Harding Highway<br>Mays Landing, NJ 08330                | 609-625-3144<br><br>or 856-205-1225*       |                   |
| <b>CUMBERLAND</b>                          | PO Box 144, Route 77<br>Deerfield, NJ 08313  | 856-451-2422<br>or 856-205-0396*           | 856-451-1358      |
| <b>FREEHOLD (Monmouth &amp; Middlesex)</b> | 4000 Kozloski Road PO Box 5033<br>Freehold, NJ 07728-5033  | 732-683-8500<br>or 732-732-9140*           | 732-683-9140      |
| <b>GLOUCESTER</b>                          | 301 Hollydell Drive<br>Sewell, NJ 08080  | 856-589-5250<br>or 856-769-2790*           | 856-256-0488      |
| <b>HUDSON, ESSEX &amp; PASSAIC</b>         | 15 Bloomfield Avenue<br>North Caldwell, NJ 07006   | 973-364-0786<br>or 973-538-1552*           | 973-364-0784      |
| <b>HUNTERDON</b>                           | 687 Pittstown Road<br>Frenchtown, NJ 08825   | 908-788-9466<br>or 908-782-4614 Ext 3*     | 908-788-0795      |
| <b>MERCER</b>                              | 508 Hughes Drive<br>Hamilton Square, NJ 08690  | 609-586-9603<br>or 732-462-1079*           | 609-586-1117      |
| <b>MORRIS</b>                              | Court House, PO Box 900<br>Morristown, NJ 07960<br>(Location - 560 W. Hanover Avenue<br>Morris Township) | 973-285-2953<br>or 973-538-1552*           | 973-285-8345      |
| <b>OCEAN</b>                               | 714 Lacey Road<br>Forked River, NJ 08731   | 609-971-7002<br>or 732-462-1079*           | 609-971-3391      |
| <b>SALEM</b>                               | PO Box 168<br>Deerfield, NJ 08313  | 856-453-8717<br>or 856-769-2790*           | 856-451-1358      |
| <b>SOMERSET-UNION</b>                      | Somerset County 4-H Center<br>308 Milltown Road<br>Bridgewater, NJ 08807                                 | 908-526-2701<br>or 908-782-4614 Ext. 3*    | 908-526-7017      |
| <b>SUSSEX</b><br>973-579-7846              | 186 Halsey Road, Suite 2<br><br>Newton, NJ 07860   | 973-579-5074<br><br>or 908-852-2576 Ext 3* |                   |
| <b>WARREN</b>                              | 224 Stiger Street<br>Hackettstown, NJ 07840  | 908-852-2579<br>or 908-852-2576 Ext 3*     | 908-852-2284      |

\*Natural Resources Conservation Service Field Office



## *Soil Conservation Districts in New Jersey*

Rev. 9-03



Issued: **October 2001**

Subject: **Temporary Certificates  
of Occupancy**

Reference: **N.J.A.C. 5:23-2.23, 2.24,  
4.18, 4.20**

The Uniform Construction Code (UCC) requires code officials to issue a Temporary Certificate of Occupancy (TCO) when all utilities are in place, and the building, or specified portions of a building, can be occupied without endangering the health and safety of the occupants (N.J.A.C. 5:23-2.23). A TCO is an administrative tool that allows a building to be occupied when the building is substantially complete and when the unfinished items do not adversely impact health or safety.

In this bulletin, the Department of Community Affairs (DCA) is providing direction on the issuance of a TCO by designating two categories of unfinished work or unmet prior approvals:

1. those which preclude the issuing of a TCO and
2. those which require the issuing of a TCO.

**A TCO shall not be issued** when any of the following items that are part of a construction project have not yet been provided:

- \* health and life-safety systems (Note: Required systems must be fully operational and, where required, systems must have been tested.)
- \* sewer or septic system connection
- \* water supply connection or well certification
- \* electric utilities connection
- \* gas utilities connection
- \* New Home Warranty issued
- \* Rooming and Boarding Home license
- \* Elevation Certificate in flood hazard plain
- \* where required, an accessible route must be provided; although, the accessible route provided under a TCO may be temporary
- \* emergency vehicle access
- \* **Report of Compliance - conditional or final (see Bulletin No. 91-2, *Compliance with Requirements of Soil Erosion and Sediment Control Act*)**

**A TCO shall be issued**, although any of the following items that are part of a construction project are incomplete:

- \* where there is no performance bond, site work such as parking, landscaping, drainage, and lighting (Note: Where unfinished items are covered by a performance

bond, a Certificate of Occupancy (CO) may be issued. [A CO shall not be issued until a Report of Compliance with the soil conservation requirements has been issued by the soil conservation district {see Bulletin No. 91-2, *Compliance with Requirements of Soil Erosion and Sediment Control Act* }]].

- \* a newly installed elevator, or elevator device, that has been approved to operate, but has not been registered with the DCA (Note: A CO shall not be issued until the elevator, or elevator device, has been registered with the DCA.)
- \* Hotel and Multiple Dwelling Certificate of Registration
- \* for Liquefied Petroleum Gas vapor delivery systems of 250-2,000 gallons, Notice of Installation
- \* for low- and high-pressure steam and/or hot-water boilers when they are of a heat input capacity of 40,000 BTU/hr or more serving six dwelling units or more, or other dwellings with accommodations for 25 persons or more, registration issued by the Bureau of Boiler and Pressure Vessel Compliance
- \* unpaid non-UCC fees or penalties
- \* unpaid UCC fees or penalties that are being appealed

A TCO must reflect the approximate length of time needed to complete the work.

- \* For work that is covered by the permit, the construction official shall establish the time frame in consultation with the appropriate subcode official(s).
- \* For related construction work that is not covered by the permit, the construction official shall establish the time frame in consultation with the agency governing the incomplete prior approval, as appropriate.

The TCO fee must be established through a municipal ordinance. The TCO fee is not intended to be a revenue enhancer; it must reflect the administrative costs of issuing or renewing a TCO. When the permit applicant chooses to pay the full CO fee at the time of the initial issuance of the TCO, there shall be no TCO fee for the initial issuance. If the TCO is renewed, a TCO renewal fee may be charged, even when the CO fee has been paid in full.

The TCO rule and this bulletin are based on the premise that it is unreasonable to prevent the occupancy of a building when no serious health or safety concerns exist in the building.